State Government

IN THIS ISSUE

The Governors' Conference—37th Annual Meeting

SINCE MAY 13, 1908, when its first session was called to order in the East Room of the White House by President Theodore Roosevelt, the Governors' Conference has been a dynamic force in the improvement of state government, the development of effective methods of interstate cooperation, and the furtherance of the ideals and purposes of the union of the states. In this critical year, the 37th annual meeting of the Governors' Conference, July 1–4, at Mackinac Island, Michigan, will consider problems of war and reconstruction and the continuing problems of state government. John A. Perkins briefly recounts (*page* 107) the development of the Governors' Conference and describes Mackinac Island, a peculiarly fitting place for what is certain to be a meeting of historic significance.

The Georgia and Missouri Constitutions

ON THE 7th of August the people of Georgia will vote upon the adoption of the 8th constitution in the history of their state. Governor Ellis Arnall describes (*page* 109) the history of constitutional revision in Georgia, the growth of demand for constitutional revision which resulted in the drafting of the proposed new constitution, and the changes which it would make in the government of Georgia.

By a vote of almost 2 to 1 the Missouri electorate in a special election on February 27, 1945, approved the adoption of a new constitution. Charlton F. Chute, Director of Research for the Committee on Legislative Research of the Missouri General Assembly analyzes (*page* 112) the salient provisions of the new document and describes the steps which led to its acceptance. As Governor Arnall and Dr. Chute both observe, the constitutional revisions in their respective states were, in the main, conservative. In neither state did the revisors attempt to go beyond the general area of state-wide agreement.

As Governor Arnall has observed, a state desiring to rewrite its basic law so as to radically alter its machinery of government might find that the method of revision adopted in Georgia (and in Missouri as well), might not be adequate for the task undertaken. Nevertheless, the examples of Missouri and of Georgia indicate that the revision of constitutions, long overdue in many states, can be successfully accomplished, given practical and courageous leadership and an electorate adequately informed as to the issues and interested in the adaptation of their state governments to the changing needs of the times.

Taxes After the War

TAXATION is certainly one of the continuing problems of government. In this issue Mr. Beardsley Ruml discusses the relation between tax and fiscal policy and the high level of employment which is a national postwar goal (*page* 113). Analyzing the Murray Bill, Mr. Ruml suggests that although its objective is one to which all can subscribe it may attempt too much, but that it "should be widely discussed, subjected to every kind of honest criticism, and strengthen and improve every section, paragraph, and sentence."

The Union of South Africa

CONTINUING the series on federalism abroad, which has been appearing in STATE GOVERNMENT, Henry John May, Barrister-at-law of Gray's Inn, London, and lately Advocate of the Supreme Court of South Africa, describes the relations between South African provinces and the central or union government (*page* 115). Later in this series the editors of STATE GOVERNMENT hope to publish a second article dealing particularly with the relations between South African provinces and their local units of government.

The greater part of Mr. May's article describes the division of powers between the central and provincial governments of the Union. In contrast to the American pattern, the central government of South Africa exercises surveillance over provincial policy to a degree that Americans have experienced seldom even during war. Eloquent explanation of at least one source of the predominance of the central authority in South Africa is found in Mr. May's closing sentences.

"As the powers of taxation of the provinces are severely restricted, it follows that they depend very largely on the Union government for financial assistance. 'He who pays the piper calls the tune.'"

Washington Report

BEGINNING with this issue, STATE GOVERNMENT will regularly carry a section devoted to current developments in Washington of interest to the states. Many readers of STATE GOVERNMENT are familiar with the Washington *Legislative Bulletin*, published by the Council of State Governments which provides a current reporting service on measures in Congress and federal administrative action in which the states have interest and concern. The "Washington Report" (*inside back cover*) cannot duplicate the service of the *Legislative Bulletin*. Of necessity it will be brief and will not contain the detailed analysis and citation of bills which have made the *Legislative Bulletin* valuable. However, the editors of STATE GOVERNMENT believe the "Washington Report," prepared in the Washington Office of the Council, will be both interesting and useful, particularly to readers of STATE GOVERNMENT who do not also see the *Legislative Bulletin*. Comments and suggestions on the "Washington Report" are invited.

STAFF CHANGE

PERRY TAFT, Regional Representative of the Council of State Governments in the Western Office at San Francisco, has accepted a position in private industry as of July 1. Mr. Taft has been a member of the staff of the Council since May 1944, and has made a real contribution to the development of interstate cooperation throughout the Western area.

P. Hetherton, who joined the staff of the Council in May of this year, will take over the direction of the Western Office. Mr. Hetherton has had long-time association with the Council of State Governments and with the states, particularly in the West, and, for many years, he was an official in the State of Washington.

State Government

THE MAGAZINE OF STATE AFFAIRS

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WE MEET for this Conference after a period of time that has been full of trouble. No man in the office of governor during these last few years has had easy times. Most of us were so buried in the problems immediately pressing in our respective states last year that we were unable to attend the Conference. Some are absent today as has been noticed, for the same reason. None are absent because they had doubts as to the fine hospitality of the great State of Michigan or the attractions of this beautiful island where this Conference is being held. We governors do not expect to solve the problems we discuss. We do expect by interchange of opinions as executives and not as partisan politicians, to help each other in the handling of multitudinous questions that arise to trouble us. I believe it can be truthfully said that more problems, more varied problems of serious nature have confronted governors in the past four years than any similar period in the history of this country.

HON. STANLEY C. WILSON
Governor of Vermont
The Governors' Conference
26th Annual Session
Mackinac Island, Michigan
July 26-28, 1934

The Governors Meet at Mackinac

Historic Island of the Turtle Site of the 37th Annual Meeting of the Governors' Conference

By John A. Perkins

During World War I in the year 1917, the annual meeting of governors of the states and territories was unfortunately postponed. At the time, the war burdened governors thought this to be the wisest course, but the month after the armistice, in December 1918, a meeting was held and Governor Manning expressed the feeling of governors generally when he declared: "The Governors have not met in conference during the war. As a member of the Executive Committee we decided that the duties of the Governors at home in their own states were such as to preclude the possibility of their meeting in the usual way. I can say, Mr. Chairman, that I feel myself a sense of loss in not coming in contact with my brother Governors because at these meetings I have found that touch of the elbow, that sympathetic touch which helps us in the various duties of our own individual states. I feel now that possibly the Executive Committee made a mistake. Maybe it would have been better for us and maybe we could have discharged the duties that came to us possibly more efficiently and with greater ease."

During World War II, the Governors have convened each year, recognizing that their home front work is all important to the goal of complete victory. In opening the Conference in 1944, Governor Saltonstall declared: "We have here the opportunity to meet and swap ideas, gain knowledge, and go back home with a better understanding of what we must do to achieve this goal." It is in this same spirit of determination better to "tackle our problems today" that the thirty-seventh annual meeting of the Governors' Conference will be held at Mackinac Island, Michigan, July 1 through July 4. While problems directly relating to the vigorous prosecution of the war until V-J day will be paramount, anticipation of inevitable victory will necessarily bring forth discussion of such topics as postwar fiscal policy, veterans, aviation, small business, industrial decentralization, and social security.

The environs of Grand Hotel on historic Mackinac Island will be conducive to the serious group discussions and the helpful informal chats which have attracted the state executives to these meetings since 1908 when President Theodore Roosevelt invited the Governors to discuss with him the question of conservation and use of the "fundamental sources of wealth of the nation." Mackinac Island, rising out of the Straits between Lakes Michigan and Huron, preserving much of a rich historical and natural heritage, is a well-chosen location in which to carry on the work of conservation and construction to which these meetings of governors have been devoted.

The original name of the island was Michilimackinac (the great turtle) so-called by the Indians who believed it had arisen from the Straits through supernatural causes. To the visitor in 1945, it appears much as Iola Fuller described it to be more than one hundred years ago:

"The island of Mackinac, the Turtle, rises high and rounding from the water. As I remember it, tall white stone cliffs rose abruptly in some places, and in others trees and bushes climbed a gentle slope. The high center was densely wooded, and ever quiet when the village in the half moon harbor was wild and noisy. Groves of spruce, pine and cedar, and the fragrant fir and balsam opened their green depths to make room for little, close huddling maples, and birch and straight-limbed beeches. So close they were that even where a footpath passed among them, the trees closed overhead so it was like walking always in a bower, and a squirrel could go for miles without touching foot to ground. Everywhere the fragrance of balsam lay like a cloud on the air, mixed at the proper seasons with aroma of wild strawberries, the thorny roses, and the pink flowers called arbutus."[1] Since the time Jean Nicolet in 1634 passed through the straits in a birchbark canoe, the first white man to enter Michigan and the Old Northwest, this tiny island has been the center of much significant American history.

Robert de la Salle passed the island in 1679 in the ill-fated *Griffon*, the first commercial sailing vessel on the Great Lakes. During the late eighteenth and the early nineteenth century, competition in the rich fur trade proved a constant irritant between the English and French, and later between the English and Americans in the Mackinac country. The British, victorious in the French and Indian War (1756–63), transferred their garrison, in 1781, from the mainland to the more strategic island heights which they proceeded to fortify, making the Island the stronghold of the Straits. The present fortifications were completed by the Americans and the 35 buildings still standing make up the oldest Army fort in the United States.

This island, described by Kenneth Roberts in *Northwest Passage* stood "as a fortress between two empires—the white man's empire to the east and the red man's to the west." At the end of the American Revolution, this bottleneck of the Great Lakes was ceded to the United States by the terms of the Treaty of Paris. It was not until the Jay Treaty in 1796 that the British actually left Fort Mackinac and so relinquished control of the fur trade which made them loath to evacuate. When the War of 1812 was declared, the British succeeded in recapturing the prize of the lakes, holding it against

[1] Iola Fuller, *The Loon Feather* (Harcourt, Brace and Company: New York), 1940.

direct attack and blockade by the Americans only to have to cede it a second time under the terms of the Treaty of Ghent in 1814. The United States henceforth prohibited foreign countries from trading pelts upon its soil.

John Jacob Astor, realizing the vast importance of this decree centered the fur trading activities of his American Fur Company at Mackinac Island in 1817. At the peak of the Mackinac fur trading industry in 1822, pelts valued at $3,000,000 were cleared through the quadrangle and barter room of the old John Jacob Astor house, original home of the American Fur Company, now used as a community house, public library, and historical museum. Astor seasonally employed 2,000 *voyageurs* and 400 clerks. In these years when Mackinac was the center of "big business" as many as 3,000 Indians sometimes camped along the beach, their wigwams often two and three rows deep. Woodsmen, European adventurers, American soldiers occupying the fort, and *coureurs de bois* made up the racial cross-section which drank deeply, brawled lustily, danced and banqueted to the full. After 1830 the fur trade declined, Astor closed the company's office and the island populace gradually diminished, leaving only a few whites and Indians in a picturesque village of 556 souls.

These people are largely occupied in servicing a modern summer resort in a horse and buggy setting. No automobiles are allowed on the island but many horses and shiny buggies form a line down the center of the street on summer afternoons to await the arrival of a steamer. Visitors are usually persuaded to take the "carriage tour" through dense woods of cedar and hardwood, over grassy slopes that were once bloody battlefields, making frequent stops to inspect curious rock formations. These were developed by the action of the sea upon the less resistant parts of the rock, creating such natural wonders as Arch Rock, Scott's Cave, Chimney Rock, Sugar Loaf Rock, and Devil's Kitchen. Southern planters were the first to build summer homes here, but the War Between The States wrecked their fortunes and their colony disappeared. Chicagoans revived the resort. Regular ferry service to the Island was inaugurated in 1881. The huge Grand Hotel, where Governor and Mrs. Harry F. Kelly will greet their guests, was built in 1887. It has twice previously been the scene of Michigan hospitality to the Governors' Conference, once in 1927, when the late Fred W. Green was host, and again in 1934, when former Governor William A. Comstock welcomed the chief executives.

In 1875, Mackinac was made a national military reservation and the small remaining garrison was not removed from Fort Mackinac until 1894, when the post was turned over to the state of Michigan and subsequently converted for the most part into a state park.

Although Mackinac Island is playing its unique part in the war effort as the scene of a major foreign policy conference and now as the workshop of the 1945 meeting of the Governors' Conference, it does not outdo the rest of the state of Michigan. Michigan's cumulative total of war contracts from Pearl Harbor to the present is nearing the $25,000,000,000 mark. Almost from the time war production got underway on a major scale, Michigan has been the leader in volume of contracts awarded, despite the fact that most of its larger plants had to be entirely reconstructed. Wayne County, the locale of Detroit, has led all other counties of the nation in war supply and facility contracts, having a cumulative total of over $12,000,000,000.

Since Michigan has been heavily drawn upon to equip the democratic fighting armies, this task has called for herculean activities by the state's transportation system. There is hardly an item used in the global warfare that hasn't, either as a part of or a completed product itself, been transported on a Michigan railroad. The loads the railroads carry run the gamut from raw iron and copper ore in the Upper Peninsula to the machine guns, cannon, shells, tanks, jeeps, airplane engines, and motor vehicles used on the fighting fronts. Water transportation has played an equally important part, for Michigan has the greatest maritime thoroughfare in the world in the Detroit River and the world's largest waterway gate is the Soo Canal. Both have more traffic and freight tonnage than any other similar place.

In peacetime Michigan ranks first in the manufacture of automobiles, drugs and pharmaceuticals, adding machines, refrigerators, chemical products, sand lime brick, calcium chloride, and bromine. Michigan is rapidly becoming a steel center. The territory from Detroit south to the Ohio border now has three large steel mills which are being expanded and soon a great part of the state's steel requirements will be mined and manufactured within its own borders.

A splendid highway system leading not only to the industrial cities but through pleasant farm land and forests to every recreational center, including thousands of inland lakes, makes Michigan an ideal state in which to spend a vacation.

Not alone famed for its resorts, manufacturing and agriculture, Michigan has for many years received recognition for its leadership in education. The University of Michigan is not only one of the earliest state universities, but also the first to admit women students. The first agricultural college to be established in the nation (now Michigan State College of Agriculture and Applied Science) is located in East Lansing. The first state normal school to be established west of the Alleghenies is now Michigan State Normal College at Ypsilanti. The expenditure of public funds for high schools was approved by the Michigan Supreme Court making a landmark in secondary education (*Kalamazoo Case,* 1871). This educational pioneering is mentioned not to minimize other accomplishments in the sciences and the arts in agriculture and industry, but simply to demonstrate that there may well be a direct correlation between the educational facilities provided out of the wisdom of the founders of the state of Michigan and the subsequent achievements of their sons and daughters.

BACK THE MIGHTY 7TH—BUY AN EXTRA BOND

A New Constitution for Georgia

By Ellis Arnall, Governor of Georgia

Editor's Note: During the past year the citizens of three states considered substantial revisions of their constitutions. In New Jersey, the electorate rejected a proposed new constitution in the general election of November 1944. In Missouri, a new constitution was overwhelmingly adopted in an election in February 1945. In August of this year the people of Georgia will pass upon a revised constitution which has already been approved by their legislature. Following are accounts of constitutional revision in Georgia and Missouri, prepared for State Government by the Honorable Ellis Arnall, Governor of Georgia, and by Dr. Charlton F. Chute, Director of Research, Committee on Legislative Research of the Missouri General Assembly.

On August 7th, the people of Georgia will vote upon the adoption of the eighth constitution in the state's history. After prolonged consideration before a Revision Commission authorized by the preceding Assembly and extensive debate in the 1945 legislature, that body submitted the new state charter to the voters.

It had been apparent to Georgians for some years that comprehensive revision of the constitution of 1877 was needed. It had been amended 301 times since its adoption, until its text lacked coordination and was cluttered with numerous "dead amendments."

The 1943 Assembly provided for a Revision Commission, whose membership comprised members of both branches of the legislature, members of the appellate and superior courts, certain constitutional officers of the state and representative citizens of Georgia. This commission of twenty-three members undertook the difficult task of editing the 1877 document and harmonizing its text, removing obsolete provisions and modernizing the basic law. Their work was submitted in January to the 1945 Assembly, and House and Senate committees held exhaustive hearings before the text was submitted to the members for debate.

Georgia Constitutional History

The history of Georgia's constitutions is unique in America. After an experiment in organizing a government without a written constitution, following the pattern of British precedent, the first Georgia charter was written in 1777 and, with minor amendments, remained in effect until two years after the federal government was established. It was replaced by the 1789 version, which was amended several times.

The constitution of 1798 is identified in Georgia history with one of the state's greatest men, General James Jackson, and endured until the War Between the States. New constitutions were written in 1861, 1865, and 1868, the last during Reconstruction while the state was under the control of federal troops.

With the end of Reconstruction, the constitution of 1877 came into existence. It was written under circumstances that left their imprint upon the document, and it has required frequent amendment in order to render it more flexible.

The framers of the 1877 document had seen the reckless abuse of the authority of the Governor, so they shackled that office. They had seen the public moneys wantonly wasted by the legislature, so they limited to the barest minimum the purposes for which public funds could be appropriated. They had seen the public credit of the state, its counties and municipalities, loaned to dishonest promoters, so they curtailed drastically the authority of local governments. In most respects the provisions were realistic solutions of pressing problems; nevertheless, they put the state and local governments into strait-jackets.

As demands for public services, for education, for highways, and for public assistance grew, more and more amendments were added. When communities that desperately needed public improvements found they could issue no bonds, local amendments became commonplace.

One of the major accomplishments of the Revision Commission, and a phase of its work in which the Assembly concurred without significant change, was the elimination of obsolete amendments. Many amendments permitting local bond issues could be stricken from the document, because the bonds long ago had been retired.

Recommendations of the Revision Commission

The fifty changes in the state constitution, authorized by the 1945 General Assembly in the comprehensive revision program, fall into four categories.

Changes in the first category deal with abuses in the political system of the state. These include: the elimination of the poll tax and the establishment of a uniform and genuine literacy test for voters; the termination of special tax exemptions to favored corporations; the requirement of proper publication of notice of local legislation before it can be submitted to the legislature; a provision that no special or local bill can lengthen or shorten the term of any local official without a referendum; the abolition of a twelve-month "lame duck term" for members of the Public Service Commission.

The second group of changes was designed to promote efficiency in state government. These include a provision that the state Supreme Court, which hereafter must sit as a full bench, shall have seven members instead of six to avoid the confusion of three-three deadlocks; the abolition of the allocation system for state revenues; the present Budget System, which has reduced the state debt 80 per cent in a little over two years, was written into the constitution; merit and retirement systems for state employees were authorized; the Commissioner of Agriculture and the Commissioner of Labor were given constitutional status; a seven-mem-

ber, veteran-controlled board was provided to direct the Department of Veterans Service; the office of Lieutenant Governor was created; the State Department of Corrections was made a constitutional department.

Important items in the third group, which deals with municipalities and counties, include: a mandatory "home rule" section; permission to cities and counties to make zoning laws, which heretofore have required action by the Assembly; clarification of the position of independent school districts under Georgia's Homestead Exemption Law; expansion of the purposes for which counties may spend tax revenues to include airports, parks, libraries, workmen's compensation, retirement funds for employees, and the creation of reserves for public works; political subdivisions are permitted to contract among themselves for exchanges of services; bonds may be issued by a majority of registered voters voting in an election; a 3 per cent additional bonded indebtedness for emergency purposes is permitted, but must be retired within five years; temporary loans may be obtained by local units in order to stay on a cash basis, but these must be retired by the end of the year; counties and municipalities are permitted to issue revenue bonds to build or acquire electric and gas utilities; each county is made a single school district for administrative and tax purposes.

In the fourth category two important safeguards were erected about the constitution itself. The first prohibits the Governor from vetoing any constitutional amendment. The second provides that any future constitution must be submitted to the people for ratification. The constitution of 1877 was deficient in that particular, and revision was long delayed because the Assembly and the people hesitated to call a constitutional convention, since under the 1877 constitution it might have adopted a new constitution without submitting it for ratification.

Changes Provided under the New Constitution

In many particulars, the 1945 constitution closely resembles that of 1877. Georgia's Bill of Rights, which forms the first section of the instrument, was preserved intact. The system of government was left unchanged. The method of representation was not altered, except that two new Senatorial districts were created to equalize representation in the upper branch of the Assembly.

The new constitution fits into their appropriate framework the major reforms adopted by the people in 1943, safeguarding their educational establishment, providing an independent Board of Pardons and Paroles, setting up a Wild Life Commission, eliminating the Governor's authority to strike the names of employees from the budgets of independent agencies for personal or partisan reasons, extending the franchise to younger voters and creating a Teachers Retirement System.

Of the new reforms embodied in the 1945 constitution, the fiscal provisions probably are of greatest importance to the state government. The allocation system, levelled by legislation adopted two years ago, had played havoc with the financial structure of the state. It was possible to eliminate it temporarily because of the war emergency, but its permanent elimination was essential to good government.

The control over public funds by the legislative branch of government, through the adoption of appropriation bills, is an essential element in democracy. The preparation of an intelligent budget, based upon the actual needs of each agency, is a major obligation of the executive branch. The allocation system, under which one agency might be provided with funds far in excess of actual requirements while other services were starving, was inefficient and costly. It was dangerous, likewise, since it freed an agency of any supervision by the legislative branch of government, when it had no need for an appropriation upon which to operate.

The Georgia Budget System, with its provisions against floating debt, have resulted in significant savings to the taxpayers of the state. The state debt, which stood at $35,961,630.38 when I took office, will be entirely paid by January, 1947, leaving Georgia debt free for the first time in more than a hundred years and with a reserve fund to finance the transition from war to peace. The inclusion of the Budget System in the constitution is a safeguard against waste and inefficiency in the future and a desirable monitor of the state's solvency.

To the local self-government units, the new constitution means a great deal. In Georgia there has been an insistently growing demand, over several years, for some practical formula for "home rule." Admittedly, the counties and municipalities were handicapped in providing needed services by the shackles imposed by the constitution of 1877, which was written under very different conditions than those existing in the Georgia of today.

The provisions for mandatory "home rule," the elimination of the dangerous practice of removing local officials or extending their terms by legislative action, and the broadening of the purposes for which local revenues can be spent on needful public services satisfies a legitimate demand on the part of those interested in efficient local public service.

The method that Georgia adopted in revising its constitution is, perhaps, not expedient for all states that desire to modernize their governments. It was found cheap and efficient in Georgia, costing less than $11,000 for the entire work of the Revision Commission. However, this was possible because there was general agreement all over the state as to the reforms to be embodied in the new instrument, and there was no inclination to reorganize the system of government in any radical manner. A state desiring to rewrite its basic law so as to change from a system of independent agencies to a cabinet system, or one desiring to abandon the cabinet system in favor of less centralized control, might find revision through the technique adopted in Georgia more difficult.

The primary objective of the Georgia revision program was to get the state government in step with the times. We in the South have a feeling that momentous events will follow the victory in the Pacific, that there will be a decentralization of industry enabling this section to realize its dream of a sound industrial-agrarian society with genuine economic security for all citizens. It was imperative that state government keep in step with the change, be more efficient and more responsive to public needs. The constitution of 1945 prepares the state government for its new obligations.

The New Constitution of Missouri

By Charlton F. Chute

Director of Research

Committee on Legislative Research, Missouri General Assembly

For the first time in thirty-five years an existing state constitution has been completely rewritten from Preamble to Schedule, submitted to the voters as one document, and adopted by them.[1] This noteworthy event is the more significant when it is realized that the document was approved by a vote of 312,032 to 185,658 or in a ratio of almost two to one. Not only did the new constitution carry by large majorities in the two big cities of St. Louis and Kansas City, but it carried also in almost half the counties in Missouri. This marked support in the traditionally conservative rural areas, which in the past have customarily returned a big "no" vote on constitutional amendments, emphasizes the fact that something distinctly unusual, both for the United States and for Missouri, has been in operation in the "show-me" state. This is to be explained by two factors; one, the merits of the new constitution itself as compared with the old one, and two, equally important, the procedure adopted before, during, and after the constitutional convention to bring about a favorable vote.

History of the Revision Movement

An amendment to the Missouri constitution, adopted in 1920, provided for a referendum on the question, "Shall there be a convention to revise and amend the constitution?" in 1921 and every twenty years thereafter. The vote was favorable in 1921, but of the twenty-one amendments proposed by the constitutional convention of 1922–23, only six, and those the least important, were adopted by the voters.[2]

The desirability of modernizing the Missouri constitution was generally recognized by persons in public life. Moreover, the proponents of constitutional change were resolved to profit by the mistakes of the constitutional convention of 1922–23, perhaps the most important of which was the failure to inform the voters adequately on the nature of the proposed constitutional changes.

Factual studies were made by citizen groups to reveal the inadequacy of some of the provisions of the Missouri constitution, originally written in 1875. These studies received widespread publicity through the press of the state. The referendum on the question of holding the constitutional convention was before the voters at the general election in November, 1942. The calling of the convention was approved by a vote of 366,018 to 265,294.

The Constitutional Convention

Delegates to the convention were nominated by a procedure set forth in the constitution itself. As a result of this procedure, the sixty-eight delegates elected from state senatorial districts were equally divided between the major political parties; and by agreement of the two party organizations, the fifteen delegates elected from the state at large were also equally divided between the parties except for the fifteenth delegate, who was classified as an "anti-New Deal Democrat." This fifteenth delegate was later elected president of the convention. The nature of this selection process is important because the bipartisan result reduced party politics in the convention almost to the vanishing point, and it permitted members of both political parties to support the proposed constitution after it was drafted. The election of delegates was held on April 6, 1943, and the Governor convoked the delegates-elect at the capitol in Jefferson City on September 21, 1943.

The convention was in session for a little over a year. Three hundred seventy-seven proposals were introduced, each of which suggested one or more changes in the proposed constitution. The proposals were referred to the committees of the convention by the president. The committees held public hearings over a period of about three months. These hearings were open to the public, and all who were interested were invited to appear to present their views. The committee hearings were very well handled; in fact, the convention built considerable good will through the evident sincerity of the members of its committees and the courtesy and consideration shown to those who appeared before them. At the conclusion of the hearings, the committees gave serious study to the various proposals referred to them, and each committee drafted a report to the convention. The work of the committees was considered, section by section, on the floor of the convention. There were no limitations on debate.

Not until toward the close of the convention was a decision made on whether to submit to the voters a series of amendments or an entire new document. The decision to submit an entire new document was approved by a very large majority. It was argued in its favor that a thorough revision could not be made by separate amendments and that it would be easier to educate the electorate on the question of whether the proposed constitution was, in general, superior to the existing constitution than it would be to educate them on the pros and cons of one or two dozen amendments.

[1] Seven state constitutions are reported to have been adopted since the beginning of the present century. Original constitutions were adopted in Arizona (1912), New Mexico (1912), and Oklahoma (1907). Complete revisions were made in Alabama (1901), Virginia (1902), and Michigan (1909). The complete revision of Louisiana's constitution in 1921 was not submitted to a popular vote, but instead was adopted by an act of the convention. This appears to have been done also in Virginia in 1902. See *The Book of the States, 1943–44, pp.* 98–110.

[2] Loeb, Isidor, "The Missouri Constitutional Convention," *American Political Science Review,* XVIII (February, 1924) pp. 18–33.

Changes Effected by the New Constitution

The new constitution is said to contain about 11,000 fewer words than were in the old constitution. To put it another way, the constitution is about two-thirds as long as the old constitution. Much obsolete matter, such as prohibitions on dueling and material relating to the St. Louis World's Fair of 1904, was omitted.

The principal changes may be briefly summarized as follows. In the bill of rights provision was made for women to serve on juries; provisions protecting freedom of speech and the press were extended to the radio; and rights of employees to organize and bargain collectively were recognized.

In the legislative department the bicameral legislature was retained. It was provided that one-third of the members of either House may at any time take a bill from a committee to the floor of the House. Each committee is required to keep a public record of the vote on every bill before it. A provision was written which, it is believed, will require senatorial redistricting every ten years. One of the most controversial issues was a provision that "the rates of interest fixed by law shall be applicable generally and to all lenders without regard to the type or classification of their business." The Committee on Legislative Research was given constitutional status.

Many extensive changes were provided in the article on the executive department. It is provided that the existing seventy-odd departments, boards, and commissions must be reduced to not more than fourteen departments. A merit system is required for the state eleemosynary and penal institutions, and it may be extended by the General Assembly. Provision is made for an integrated department of revenue to collect all state taxes except those collected by local officials. The fiscal year of the state was changed to begin on July 1 instead of on January 1. Provision is also made for a department of public health and welfare, a rather novel combination so far as state government is concerned.

The article on the judicial department gives the Supreme Court the power to make rules of practice and procedure (including criminal procedure) for all courts and permits the Supreme Court to transfer judges temporarily from one court to another. The nonpartisan court plan, twice before approved by the voters, was retained. The system of magistrate courts replaces the justices of the peace. It is provided that all probate judges and magistrates must be lawyers. The fee system of compensating judges is abolished.

Several provisions of the article on local government will be of widespread interest. Any county whose population is over 85,000, and there are four in Missouri, may draft a charter for its own government. The constitution also provides that the General Assembly shall divide counties into not more than four classes and may provide alternative forms of government for the counties of any particular class. Two or more counties, but not in excess of ten, may cooperate in the performance of any governmental function, such as almshouses, hospitals, and roads. Home rule for cities has been extended to permit municipalities with a population of 10,000 or more to frame and adopt their own charters. In general, the restrictions on local indebtedness are retained, but in addition it is provided that any city may issue revenue bonds for the purchase or construction of its own municipal utilities by a majority vote of four-sevenths.

The most important change under suffrage and elections was to grant absentee voting privileges to qualified civilian voters of the state who were outside of Missouri on election day.

Most significant in the article on education was the change from an elective State Superintendent of Schools to the establishment of a bipartisan board of education of eight members appointed by the Governor for overlapping terms. The board is to select a State Commissioner of Education. A new provision is that requiring state support of public libraries. The old provision of separate schools for white and colored children was modified to permit exceptions to be authorized by the legislature.

Some of the greatest changes are to be found in the article on taxation. The general property tax is removed from the constitution; instead it is provided that all property shall be classified for tax purposes into three groups: real property, tangible personal property, and intangible personal property. The General Assembly may provide for further classifications of both tangible and intangible personal property, with certain limitations. Intangibles are to be taxed on their yield and on a rate not to exceed 8 per cent of the yield. Taxes on intangibles are to be assessed and collected by the state and returned, less 2 per cent for collection costs, to the counties and other political subdivisions of their origin. Rigid constitutional tax rate limits for local government are modified in favor of flexible limits which may be exceeded by a two-thirds majority vote of the local voters. The General Assembly may, however, place restrictions on such an increase. Special levies may be authorized by law for library, hospital, health, recreation, and museum purposes. An interesting provision is designed to encourage the reforestation of lands not suitable for farming and the reconstruction of blighted areas in cities by authorizing the General Assembly to provide for partial relief from taxation "of the lands devoted to such purposes and of the improvements thereon" for a period of not more than twenty-five years.

The Winning of Public Support

Many factors worked in favor of the adoption of the new constitution. In contrast to the attitude twenty years earlier, the great bulk of the delegates favored the new document and were willing to work actively to secure its adoption. Secondly, the newspapers of the state, and particularly those in St. Louis and Kansas City, had long campaigned for needed changes in the constitution. A poll of the press of the state indicated that out of 123 publishers, 106 reported their newspapers to be actively supporting the new constitution. Thirdly, the convention won the support of nearly every statewide organization. The new constitution was endorsed by all six living ex-governors and the present Governor, the heads of the Democratic and Republican state committees, the three statewide farm organiza-

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Taxes After the War

By Beardsley Ruml

Treasurer, R. H. Macy and Company

We have a primary postwar national objective on which there is general agreement, namely, high employment under a democratic private enterprise system, and it is appropriate that national fiscal and monetary policy, including taxation, should contribute to our attaining this objective. But we should not overlook the fact that the basic objectives of fiscal and monetary policy lie elsewhere.

Essentials of a National Fiscal Policy

The two essentials of national fiscal and monetary policy are: first, to provide the means of meeting the financial requirements of the government in such a way that we shall have a reliable money system—a money system that will give the people a stable medium of exchange and store of value; and second, to provide a system of financial institutions that will give the people a sound banking structure and a satisfactory credit mechanism. These two essentials of fiscal and monetary policy are of themselves of the first importance to the maintenance of continuing high employment under a democratic private enterprise system.

We must recognize that a sound fiscal and monetary policy is not the only condition necessary for attaining high prosperity. We must have government stability; satisfactory relations between costs and prices; confidence in the outlook generally for business volume and profits; clear and simple laws and regulations; protection against illegal acts of all kinds; fair access to markets, to processes, and to raw materials; and favorable terms on which loan and equity capital are made available. These, and other considerations, determine in any specific instance whether or not employment-creating activities will be undertaken. However, appropriate fiscal and monetary policies will aid strongly in achieving the conditions that will make for high employment.

And so, the question before us is, What fiscal, monetary, and tax measures, consistent with maintaining a reliable money system and an efficient system of financial institutions, would, in addition, promote high employment under private enterprise?

Since taxation is one of the most important parts of fiscal policy, let us discuss basic policy for federal taxation. The idea behind our tax policy should be this: that our taxes should be high enough to protect the stability of our currency, and no higher. Putting it another way, our taxes should be as low as they possibly can be without putting the value of our money in danger of inflation. The lower our taxes are, the more purchasing power will be left at home in the hands of the people—money that can be spent by them for the things they want to buy, or that can be saved and invested in whatever manner they choose.

Now it follows from this principle that our tax rates can and should be lowered to the point where the federal budget will be balanced at what we would consider a satisfactory level of high employment. If we set our tax rates any higher than this, we are reducing unnecessarily the money that private individuals will have to spend and to invest; and, therefore, we make it more difficult for ourselves to get to high employment and to stay there.

Accordingly, in order to set our tax rates, we must have some general idea of what a satisfactory level of employment in peacetime would be. Some people call such a level "high employment"; others prefer to use the term "full employment," although they are careful to point out that there will always be a certain number of people unemployed at any particular time in a country where men and jobs are not strictly regimented.

There is much agreement, fortunately, that a satisfactory level of employment means about 55 million people at work on an average work week of about forty hours in ordinary peacetime occupations. It might be a little less or it might be a little more; but this standard is close enough to the realities to give us a start on our thinking.

Taxes and High Level Employment

The question is frequently asked, "How do you reconcile these figures, calling for 55 million people employed in ordinary peacetime occupations, with the President's figure, 'close to 60 million productive jobs'?" I do not presume to give an authoritative reconciliation, but for my own part it does not seem difficult. The sixty million figure may well include two and a half million men and women in the armed forces, since if any jobs are productive, these certainly are. Then too, there must always be more jobs than there are people actually employed. There are jobs that are not yet filled; part-time jobs and seasonal jobs. So when we take all these considerations into account, I think there is very little difference between "close to 60 million productive jobs" and "55 million people at work in ordinary peacetime occupations."

If we have 55 million people employed on a forty-hour week, and if the price level is about where it is today, we will have a national income of about 140 billion dollars. I am not predicting that we will in fact have a national income of 140 billion dollars, or any other figure. What I am saying is that if we have a satisfactory level of employment and the present price level, the arithmetical consequence is a national income of 140 billion dollars. It is against this level of national income that our peacetime tax rates should be set.

It would be unwise to rely on tax policy alone to create a high level of employment. Private individuals and public agencies must cooperate all along the line.

Private business men in their own companies and in their local and national associations are actively at work on plans for reconversion and expansion. One organi-

zation of business men of which I am sure you all have heard, the Committee for Economic Development, has as its single purpose the achieving of a high level of productive employment after the war. The Committee recognizes that, if we are to have jobs at all, the job makers have to go to work first.

The agencies of government are active, too. Federal, state, and local governments, the executive and the legislative branches are concerned with the problem; and things are beginning to happen. Our tax policies must take these other plans into account.

One measure in particular must be carefully studied. This is the proposed "Full Employment Act of 1945," commonly referred to as the "Murray Bill."

Analysis of the Murray Bill

The Murray Bill is not a legislative accident. It did not suddenly spring from nowhere on to the floor of the Senate. As a matter of fact, the Murray Bill has a long and respectable intellectual and political history.

One of its early beginnings was in September, 1921, when a Conference on Unemployment, of which the then Secretary of Commerce, Herbert Hoover, was Chairman, made some very explicit recommendations favoring the use of public works as a means of attacking unemployment. The language of the recommendations which were adopted at that time is interesting.

"Public construction is better than relief. The municipalities should expand . . . to the fullest possible volume compatible with the existing circumstances. The Governor should unite all State agencies . . . in expedition of construction of roads, State buildings, etc. The Federal authorities should expedite the construction of public buildings and public works covered by appropriations. A congressional appropriation for roads would make available a large amount of employment.

"The Conference under existing circumstances, notwithstanding various opinions as to the character of the legislation and the necessity for economy, recommends congressional action at the present session in order that work may go forward."

Curiously, no reference to taxation is made in the report of this 1921 Unemployment Conference.

The unemployment crisis of 1921 proved to be a short one; but the danger of unemployment lived on, and reappeared once more in 1929. This time federal action became imperative and, in February of 1931, President Hoover signed the "Employment Stabilization Act of 1931" which was sponsored by Senator Wagner of New York.

The Wagner Act of 1931 also contains some language with a curiously modern flavor. I quote from the Act:

"Whenever the President finds that there is likely to exist, in the United States or any substantial portion thereof, a period of business depression and unemployment, he is requested to transmit to the Congress by special message such supplemental estimates as he deems advisable for emergency appropriations. . . . It is hereby declared to be the policy of Congress to arrange the construction of public works so far as practicable in such manner as will assist in the stabilization of industry and employment. . . . The President is requested . . . to take into consideration the volume of construction in the United States, the state of employment, and the activity of general business. The Board shall collect information concerning advance construction plans and estimates by States, municipalities, and other public and private agencies."

Again, in the Wagner Act of 1931, no reference is made to taxation.

The Murray Bill, coming some fourteen years later, reflects the experience of the depression of the 1930's and our growing knowledge of the factors that are relevant to the maintenance of high employment. Much more explicit reference is made to the stimulation of private enterprise, no longer are public works the exclusive method of attacking the danger of under-employment, and now we find mentioned among other things, as part of the program, "Federal policies . . . with reference to . . . taxation."

Thus the Murray Bill is an evolution from earlier American thinking on the subject of unemployment. It is in the groove. The basic ideas of the Murray Bill have had bipartisan sponsorship and deserve nonpartisan standing.

The Murray Bill is the American expression of a worldwide recognition that the people, working together through their national government, must protect the individual against the hazard of undeserved unemployment.

The Murray Bill should be widely discussed, subjected to every kind of honest criticism, and strengthened and improved in every section, paragraph, and sentence. But it should not be interpreted as a step toward totalitarian regimentation or as an inspiration of the New Deal to be opposed as such.

My own feeling about the Murray Bill is that, standing alone, it attempts to do too much. It should be buttressed by other measures in the areas of public works, social security, and taxation that will tend automatically to bring the economy into reasonable stability at high levels of private, productive employment. With these other measures operating automatically, the problem remaining to be attacked by the methods of the Murray Bill will still be difficult, but not, in my opinion, insoluble.

We can now see more clearly the place of federal tax policy in the over-all picture. Federal taxes must protect the currency against inflation and deflation. But they should also help us get to high employment and should operate as one of the automatic instruments that help stabilize the economy. That is why we can and should adopt as our basic federal tax policy the reduction of tax rates to the point where the budget at high employment will be balanced at high employment.

Under this policy, what taxes should be reduced, and how much? These questions are matters of both tax policy and public policy. In general, however, it can be said that taxes should be reduced where it will do the most good in increasing the standard of living and stimulating the flow of savings to private investment.

Today, it is generally recognized that taxation has something to do with high levels of production and employment. This is a great gain. It increases immeasurably the strength of the weapons which we can use to achieve prosperity under a private enterprise democracy.

The Union of South Africa
The Provinces and the Central Government*

By Henry John May

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The legislative system of the Union of South Africa, created by the South Africa Act, 1909, by enactment of the British Parliament, consists of a Union or central Parliament and a provincial council in each of the four provinces, Cape of Good Hope, Transvaal, Natal, and the Orange Free State.

The provincial system of South Africa presents to students of constitutional law something unique in British constitutions. It represents a compromise between federal and union ideas. When the South African constitution was in the making, the colony of Natal fought most strongly for federation; the other colonies desired a union. The battle between the two systems presented itself to the national convention at the outset of its deliberations. Though the unifiers won, the victory was a compromise. The failure of the convention was thus averted, for no delegate dared to incur the responsibility of wrecking it. The price of the victory was the assurance to Natal that the provinces would be given a very full measure of autonomy in local matters. The provincial councils, therefore, are something more than local authorities, something less than state parliaments.

The provincial constitutions are not rigid, but extremely flexible, and show certain federal characteristics which reflect the demands of Natal at the national convention. First, the provinces were given certain subjects of control over which (although they might be enlarged or curtailed by the Union Parliament) they had a plenary and not a delegated power. They were allowed to elect members of the Senate of the Union Parliament on a provincial and not on a numerical basis.

The main features provided by the provincial constitutions are these: (1) an administrator appointed by the Union government for five years, paid by it, representing it, and removable only by it; and thus responsible to the Union government only, and not to the provincial legislature; (2) an executive committee of four members presided over by the administrator, who has a casting as well as a deliberative vote (the executive committee is elected by the council by means of the single transferable vote system of proportional representation for a period of three years and cannot be removed by the council or the administrator or the Union government, and is thus responsible to nobody); (3) a council consisting of as many members as the province has members of Parliament, with a minimum of twenty-five members, elected for a term of three years by the electors who elect members of Parliament. As neither the executive nor the administrator is responsible to the council, the latter body's power consists mainly in the negative one of refusing to pass legislation introduced by the executive or refusing to consent to appropriations recommended by the administrator; positively, it can initiate other than financial legislation and it can amend draft ordinances introduced by the executive.

The constitution of a province thus represents in itself a feature of the constitutions of the United States and of Switzerland, a complete separation of the executive from the legislature, although it is entirely different from the constitutions of the Australian states or the Canadian provinces, for in both the latter constitutions the executive is responsible to the legislature. It is curious that in this feature of the separation of the executive from the legislature and its nonresponsibility to the elected body the provincial constitutions should have followed the United States federal constitution. Yet the system in the South African provinces is very different from the United States model, for the president of the United States is elected and he appoints his own executive, whereas the provincial administrator is appointed by the Union government and he does not appoint the executive committee but it is elected by a council to which it is not responsible. The members of the executive committee, it is to be noted, need not be members of the council.

Provincial Government: The Administrator

The administrator is one of the most important officials in the South African system of government. He probably has more power and influence than any person save a cabinet minister. His duties may be divided into four categories: in the first place he is the public representative of the province. He welcomes distinguished visitors to the province at important official functions. He opens schools, bazaars, teachers' conferences, new roads and the like, and takes part in the official social life of the province. His duties in this respect are manifold and apparently necessary.

In the second place, he is a member and chairman of the executive committee, and in this respect he has much more power than, for example, the lieutenant-governor of a Canadian province. In the executive committee he has both a deliberative vote and a casting vote. He is in no way responsible to the provincial council or to the executive committee, but he relies on the former to pass his measures and on the latter to cooperate with him in getting those measures translated into law. Yet neither council nor committee is absolutely necessary for the administration of the prov-

*Fourth of a series of articles on federalism abroad and first of two articles pertaining to federalism in South Africa.

ince. If the administrator were given the legislative powers of the provincial council, experience indicates that the whole council and the executive committee could be abolished with beneficial results.

In the third place, there is the relationship of the administrator to the provincial council. He summons and prorogues the council. He prescribes the dates of general and by-elections. He promulgates the ordinances of the provincial council. He has to recommend or introduce all money or appropriation ordinances. He sits in the council, may take part in the proceedings (though he cannot vote), and he may introduce his own measures. Usually all the official measures are introduced by the administrator, though, very rarely, they may be introduced by an executive committee member who represents the strongest party in the council. The administrator's expertness in provincial matters, gained by reason of his experience of everyday provincial affairs, makes him a most influential and powerful factor in the council's debates. Yet he is not part of the council. He is the council's guide and its watchdog, and, though not its master he is also not its servant.

In the fourth place, the administrator is an officer of the central government. He is appointed by the governor-general-in-council for a period of five years, and he may be removed by the governor-general-in-council for reasons communicated to both houses of Parliament. His salary is paid out of the Consolidated Revenue Fund of the Union. In the last resort, he is responsible to the Union government. And as he is responsible to the Union government, he must, in some measure, obey it.

It is as a liaison officer between the two administrations that the administrator does most useful work. Where there are two legislative bodies operating over the same field, though the one is entirely subordinate to the other, there is bound to be a certain amount of friction. When provincial ordinances are being drafted the administrator keeps in touch with Union departments of state so that the interests of the Union as a whole may be considered.

In the field of finance the Union government is directly interested. The provision that appropriation must be recommended by the administrator is a safeguard against the possibility of provincial financial maladministration embarrassing the finances of the Union, though it must be admitted that this safeguard has hardly been sufficient.

We have seen that the administrator has a dual capacity, that of a provincial executive officer and that of a representative of the Union government, a dim analogy to the old dual capacity of the governor-general as a local constitutional monarch and a representative of the British government. As a Union government officer the administrator has various statutory duties of minor importance under Union statutes. As a provincial executive officer he has numerous duties under provincial ordinances. He proclaims the establishment of municipalities and other local government bodies. The whole of local government is under his control. Provincial officials audit the accounts of local bodies. Hospital boards, roads, and all the administrative detail of provincial government in one form or another come under the vigilance of the administrator acting either on his own responsibility or with the executive committee. It is in the administrator's name that all official acts of the province are done. The province may sue or be sued in his name. He is the province's prime minister as well as its governor-general.

We may usefully compare the administrator and the governor-general for purposes of instruction only, for the two positions are in fact as different from each other as two positions well can be. Both administer the executive government in their respective spheres; both are chief executive officers in those spheres; both summon and prorogue the respective legislatures; both are not responsible to the legislature; both recommend or, more correctly, ask for supply; both are chairmen of the executive, but whereas the governor-general does not preside at cabinet meetings, the provincial executive cannot validly function without the presence of the administrator or his duly appointed deputy. Further, the administrator sits and speaks in the provincial council, while, of course, the governor-general never sits or speaks in parliament except when delivering the speech from the throne. The administrator comes into close contact with details of administration, meets deputations, hears the expression of views on the administration of his officers, whereas the governor-general does none of these things, except, of course, hearing the views of his ministers. The administrator has no veto on provincial ordinances—not even a formal right of assent, nor may he dismiss a member of the executive.

The Executive Committee

The executive committee is composed of: an administrator appointed by an outside authority, who presides over the committee's proceedings, and is necessary to the committee's functioning, and four elected members not responsible to the body which elects them, but able to sit and take part in the proceedings of that body, but not entitled to vote if they are not members of the council. The executive committee, therefore, is similar neither to the executive in the United States, which is appointed by the president but does not sit in the legislature, nor to the executive or cabinet in the Canadian provinces or the Australian states, which are parliamentary executives in the full sense in which the British or Union ministries are parliamentary executives. And the provincial executive committee has this important difference when compared with the Swiss executive council, namely, in Switzerland members lose their seats in the legislature when elected to the executive, whereas in South Africa they do not. The South African system therefore represents, in its entirety, neither a parliamentary executive nor a nonparliamentary executive. It is, like so much else in the provincial system, a mixture of both. It cannot easily be classified in the scheme of constitutional institutions.

The executive committee has various important duties and powers. It carries out, or assists the administrator in carrying out, the provisions of the provincial council's legislation. Whether it does so efficiently or not,

the council cannot effectively censure any maladministration by the executive committee and can only rely on an actual breach of law for action to be taken by the proper authorities. The executive committee has the power to appoint officials. It can establish new schools; it can make or control the courses of study in the schools. Over all this the executive committee has a more or less uncontrolled discretion. The provincial council can only withhold supply. It can in the long run starve the executive committee into submission; but the process is capable of being a long and painful one, and if the Union government is at all in sympathy with the executive committee, it may come to its rescue with supplies, as it did in 1914 when there was a deadlock in the Transvaal Provincial Council. Another important duty of the executive committee is to draw up the estimates for the province. The administrator usually makes the budget speech, but sometimes a member of the executive committee does this. The executive committee endeavours to be unanimous in its decisions and recommendations, but its constitution and method of election do not allow this to be a universal rule. When, as happened in the Transvaal in 1917, each of four political parties has one representative on the executive committee, there is bound to be a great deal of friction and disagreement. The rule of collective cabinet responsibility does not therefore apply in either of its two meanings: the executive committee is not responsible to the council, and when it does make recommendations it is permissible for the representative of one party to state that he disagrees with the recommendation, and he may vote against it and advise his party to vote against it.

The Provincial Councils

Under section 70 of the South Africa Act, the councils of Natal and the Orange Free State have 25 members each. Until they return 25 members to Parliament, the electoral divisions will be different in the provincial election from what they are in the parliamentary elections. In the Transvaal and the Cape the electoral divisions are the same as for parliamentary elections and the same number of members is elected to the provincial council as to Parliament, though a person may not be a member of both bodies.

The legislative powers of the provincial councils are governed by four principles. *First, they are not delegates or agents of the Union Parliament,* but they are original legislative bodies, that is, their original authority is drawn from the South Africa Act, 1909, a statute of the British Parliament. Their status is not analogous to that of municipal institutions, whose powers are delegated powers. Their ordinances are laws, i. e. statutes and not by-laws. Within their limits of subject and areas they have a plenary and independent power and not the power of an agent acting on behalf of a principal.

Secondly, the powers of the provincial council are positive, defined, precise, and limited. The powers of provincial councils flow from the words of section 85 of the South Africa Act: "Subject to the provisions of this act and the assent of the governor-general-in-council as hereinafter provided, the provincial council may make ordinances in relation to matters coming within the following classes of subjects (that is to say) . . . ." Then follow eleven heads of power, and two potential groups of powers provided for by the following words: "Generally all matters which, in the opinion of the governor-general-in-council, are of a merely local or private nature in the province, and all other subjects in respect of which parliament shall by any law grant the power of making ordinances to the provincial council."

The powers of the provincial council, therefore, depend upon the terms of the South Africa Act, or on a Union statute giving the council power to legislate on some definite subject-matter or for some definite purpose. It does not matter whether Parliament has given such power directly to the council, or has enabled some other authority, for example as the governor-general-in-council, to make the grant of power at its discretion, the power in every case flows originally from the South Africa Act.

Thirdly, within their limits of jurisdiction, the powers of the provincial councils are as plenary, as absolute, and as discretionary as those of the Union Parliament and include all the powers reasonably ancillary to those expressly conferred.

Fourthly, the powers of the provincial councils are not immutably fixed, but may at any time be repeated or amended by the Union Parliament.

The Supremacy of the Central Legislature

Having thus dealt with the provinces, we may examine their relationship with the central government. The chief characteristic of the South African constitution may be said to be supremacy of the central legislature.

Section 152 of the South Africa Act expressly provided that the Parliament of the Union "may by law repeal or alter any of the provisions of this Act." The South African "constitution," therefore, does not dominate the legislature; the latter may at any time amend the "constitution." The Union Parliament has repeatedly altered the provisions of the South Africa Act (there have been nearly 200 amendments in 35 years), and it has done so with as little formality and with as little constitutional difficulty as it has altered any other law of the land.[1]

The most striking characteristic of the South African constitution therefore is its unitary nature. "Parliament shall have full power to make laws for the place, order and good government of the Union" (section 59). Nothing can be wider than that. "Any ordinance made by a provincial council shall have effect in and for the province as long as and as for only as it is not repugnant to any Act of Parliament" (section 86). Thus, there is removed from the sphere of government in South Africa any possibility of legislative conflict or overlapping. As soon as an object of legislation is dealt with by the Union Parliament, or if an act of Parliament happens incidentally to touch on matters upon which the provincial councils, under powers specifically

[1]Previous to the passing of the Statute of Westminster there were two "entrenched" clauses in the South Africa Act, requiring a two-thirds majority to amend them.

granted to them, have legislated, every provincial ordinance on the same subject-matter falls away to the extent of its repugnancy to the act of Parliament. No other legislative body in the Union can compete, expressly or implicitly with the Union Parliament. There is not in the Union constitution, as there is in a federal constitution, a division of powers between the central or national legislature and the state or provincial governments.

What then is the nature of the legislative power of the provincial councils? The difference between the provincial councils and the Union Parliament, apart from differences which spring from the fact that the latter is a constituent assembly in the sense that it can change its own constitution whereas the former cannot change their constitutions, is that the powers of the provincial councils are much narrower both in respect of territorial jurisdiction and of subject-matter. But within their areas and subjects of jurisdiction they have full powers of legislation, limited only by the overriding power of Parliament.

Whereas the powers of the Union Parliament are undefined and to a certain extent unlimited, the powers of the provincial councils are positive, defined, precise, and limited. They fall within the heads of powers granted by section 85 of the South Africa Act, or the powers which the Union Parliament may grant them. Beyond the ambit of those powers they may not tread, but within them their powers are as plenary and discretionary as those of the Union Parliament and they have all the auxiliary or implied powers that are necessary for the exercise of the direct powers granted them. It does not matter whether they exercise their powers unjustly or unreasonably or in doing so defy fundamental principles of morality or justice. The only test which the courts can apply is that of legality and not that of ethics. The question always is, "Was the power granted to the provincial councils to legislate upon a particular subject?" If such power was granted the manner of its exercise is immaterial.

But as stated above, the powers of provincial councils may at any time be altered by the mere passing of a statute by the Parliament of the Union which does not so much as mention the provincial councils. As soon as Parliament legislates on a subject within the powers of the provincial councils, all future provincial legislation has to conform to that enactment so long as it remains law, and all existing provincial ordinances are limited or repealed to the extent of their repugnancy to that act of Parliament.

Control of Provincial Legislation by the Union Government

Apart from the control by legislation referred to above, the provincial councils may be controlled by the refusal of assent to legislation. Section 90 of the South Africa Act provides that when a proposed ordinance has been passed by a provincial council it shall be presented by the administrator to the governor-general-in-council for his assent, and he shall declare within one month from the presentation to him of the proposed ordinance that he assents thereto or withholds his assent, or that he reserves it for further consideration. If a reserved ordinance does not receive such assent within one year of its reservation it lapses.

This is the provision which is referred to when judges declare that matters of good government or wise policy are not for the courts to consider but for the governor-general-in-council, which in practice means the cabinet.

The central government, apart from Parliament, therefore, has the power of controlling provincial legislation by the power of veto or reservation mentioned above and this power has often been invoked. It also has the power of withholding funds from a province and this naturally has a strong restraining influence on a provincial council and especially on an administrator, for the provinces, by a system of subsidies and revenues assigned to them by the Union government, depend very largely on the Union government for their revenue.

Heads of Legislative Powers of the Provinces

It has been stated that the powers of the provincial councils are to be found in section 85 of the South Africa Act under thirteen heads. They are:

(1) *Direct taxation* within the province in order to raise revenue for provincial purposes. This wide power has been drastically curtailed by allowing the provinces to raise revenue only through specified sources, i.e. hospital fees, dog and game licences, motor vehicle licenses, amusement taxes, auction dues, racing taxation and totalisators, personal taxes on persons and company taxation within specified limits, and certain other small impositions.

(2) *Borrowing powers.* The borrowing of money on the sole credit of the province with the consent of the governor-general-in-council and in accordance with regulations to be framed by Parliament.

(3) *Education,* other than higher education, for a period of five years and thereafter until Parliament otherwise provides.

(4) *Agriculture* to the extent and subject to the conditions to be defined by Parliament.

(5) *Hospitals and charitable institutions.* The establishment, maintenance, and management of hospitals and charitable institutions.

(6) *Local government.* Municipal institutions, divisional councils, and other local institutions of a similar nature.

(7) *Local works.* Local works and undertaking within the province, other than railways and harbours and other than such works as extend beyond the borders of the province, and subject to the power of Parliament to declare any work a national work and to provide for its construction by arrangement with the provincial council or otherwise.

(8) *Roads and bridges.* Roads, outspans, ponts, and bridges, other than bridges connecting two provinces.

(9) *Markets and pounds.*

(10) *Fish and game preservation.*

(11) *The imposition of punishments* by fine, penalty, or imprisonment for enforcing any law or any ordinance of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section.

(12) *Other local matters,* i. e. "Generally all matters which, in the opinion of the governor-general-in-council, are of a merely local or private nature in the province."

(13) *Other delegated powers,* i. e. "All other subjects in respect of which Parliament shall by any law delegate the power of making ordinances to the provincial council."

A large number of these powers have been delegated, among them the destruction of noxious weeds and vermin, the administration of libraries, museums, art galleries, and botanic gardens, the distribution of poor relief, the control shop hours, the establishment of townships, the control of horse and dog racing, and the regulation of places of amusement, advertising, and town planning.

THE FINANCIAL SYSTEM OF THE PROVINCES

The South Africa Act provides that a provincial revenue fund should be formed in each province, but no money shall be issued from this fund except in accordance with an appropriation ordinance under warrant of the administrator, and that the Union government shall appoint the auditor of accounts in each province. The power of control by the Union government lies in these provisions, for the governor-general-in-council may refuse assent to provincial legislation which is reckless in its appropriations.

Furthermore the Financial Relations Act, 1913, provides that the revenues of the provinces shall be augmented by (1) subsidies from the Union treasury, and (2) revenues imposed and collected by the Union Parliament and transferred or assigned to the provinces. As the powers of taxation of the provinces are severely restricted, it follows that they depend very largely on the Union government for financial assistance. "He who pays the piper calls the tune."

The New Constitution of Missouri

(*Continued from page 112*)

tions, the teachers' association, organized industry, organized labor, chambers of commerce, professional men's organizations, the League of Women Voters, and the Missouri Municipal League.

The organized opposition to the new constitution was led by three or four former delegates to the constitutional convention and a circuit clerk from a rural county. Their chief arguments were that Negro and white children might attend the same schools and that this was undesirable, that taxes would be increased, and that it was unfair to the men in the armed services to adopt a new constitution in their absence.

It is clear that Missourians considered the new constitution superior to the old one. It would be fair to characterize the new document as moderately progressive. Many students of government would have wished for greater changes, but they must remember that Missouri is a conservative state and progress is made by the slow process of evolution. The framers frequently said their aim was to draft the most modern document that they felt the voters would accept. The adoption of the new constitution is the first evidence of the success of their undertaking.

Much remains to be done to put the constitution into effect. Certainly hundreds, and probably thousands, of sections of the state's statutes must be revised to conform to and implement the new constitution. The new document provides that "all laws inconsistent with this constitution, unless sooner repealed or amended to conform with this constitution, shall remain in full force and effect until July 1, 1946."

The present General Assembly faces a tremendous legislative task, and it is freely estimated that it will be in session for at least a year.

THE EMPLOYMENT SERVICES SHOULD BE RETURNED TO THE STATES

An Editorial—The Baltimore Sun—May 22, 1945

THE ONLY PEOPLE with logical reasons for resisting the return of the employment services to the states where they were before Pearl Harbor will be those who think the Federal Government has a continuing need to control civilian manpower as a unit. The people most likely to contemplate that kind of Federal control of manpower in peacetime are those who think the Federal Government ought to guarantee 60,000,000 or some other number of jobs in the postwar era.

But, though bills providing such a guarantee are pending, it is by no means as yet clear that the country will accept them. Perhaps the chance of their acceptance will be even further reduced if their backers suggest to the public that Federal control of manpower—the power in peacetime to assign men to jobs on much the basis of such assignments during the war—is a necessary part of any direct Federal guarantee of full employment.

All that being so, the return of the job services to the states where they belong seems likely. After all, their federalization was really as much a wartime policy as selective service. That is so for the obvious reason that federalization of the employment offices plus manpower orders based on that fact was about as far as we ever got toward a civilian manpower draft comparable to the draft of military personnel. Other democratic belligerents drafted men for war factory work as a matter of course. We federalized the employment services and through the machinery thus afforded gave job assignments under varying degrees of indirect compulsion.

But the manpower controls will pass with the emergency. Therefore the machinery by which they are applied needs no longer continue on a Federal basis. Industrial employment becomes again a state and regional matter, not a direct Federal responsibility. The employment services should come back to the states just as the present military draft will lapse with the end of the war.

AROUND THE STATES

Pennsylvania Enacts Administrative Register Agency Laws

In the 1945 legislative session, the General Assembly of Pennsylvania approved a *Pennsylvania Register Act* which provides for the publication and distribution of any rule, regulation or order generally applicable to the public, promulgated by any administrative agency of the Commonwealth having state-wide jurisdiction. All administrative documents required by law to be published shall, and other documents may, be printed in a serial publication designated as the *Pennsylvania Register*. The Director of the Legislative Reference Bureau is charged with responsibility for arranging through the Department of Property and Supplies for the publication and distribution of the *Register* in accordance with the provisions of the Act. There is to be created a Pennsylvania Register Board consisting of the Secretary of Property and Supplies, the Secretary of the Commonwealth, and the Attorney General, or their representatives, and the Director of the Legislative Reference Bureau, who shall be Chairman.

The Board is to prescribe regulations for carrying out the provisions of the Act, including (a) the manner of certification of copies of regulations, (b) the classes of documents which may be published in addition to those required by law, (c) the manner and form in which the *Register* shall be printed, compiled, indexed, bound and distributed, (d) the price to be charged for the individual copies and the subscription to the *Register*, and (e) the number of copies which shall be distributed free for official use. No regulation or revision of an existing regulation promulgated after 150 days following the effective date of the Act shall be valid unless published in the *Pennsylvania Register* within 45 days after its adoption except that this provision shall not apply where the Department of Justice certifies that because of an emergency or other compelling extraordinary circumstance the public interest requires that a regulation become effective without prior publication. But, emergency regulations, together with a copy of the certification of the Department of Justice are required to be published in the earliest available issue of the *Register*.

A second significant measure enacted by the 1945 Pennsylvania General Assembly concerned the regulations, procedures and adjudications of the administrative officers and agencies of the Commonwealth. Administrative adjudication as defined by the *Administrative Agency Law* means "any final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities or obligations of any or all of the parties to the proceeding in which the adjudication is made but shall not mean any final order, decree, decision, determination, or ruling based upon a proceeding before a court or which involves the seizure or forfeiture of property or which involves paroles or pardons." No administrative adjudication shall be valid as to any party unless it shall have been afforded reasonable notice of a hearing and an opportunity to be heard. Provision is made for the judicial review of administrative adjudications, but an appellant may not raise upon appeal any question not raised before the administrative agency, except as the court may allow upon a show of due cause. The act does not apply to certain rulings concerning taxation and banking.

Delaware Creates Legislative Reference Bureau

On April 20, 1945, Governor Walter W. Bacon approved an act which creates a "Legislative Reference Bureau of Delaware." The Bureau is to be composed of the Governor, the President pro tem of the Senate, and the Speaker of the House of Representatives. The Bureau is to engage in bill drafting, research with respect to the subject matter of the proposed legislation, and shall recommend revision of such legislation as may be considered necessary. Earl D. Willey has been appointed Executive Director of the Bureau and an appropriation of $10,000 for each of the succeeding two years has been provided.

Pollution Compacts

The Pennsylvania General Assembly in the closing days of the session ratified the Potomac River Compact, thus joining the District of Columbia, Maryland, Virginia, and West Virginia in the work of the Interstate Commission on the Potomac River Basin which has been actively engaged in the control of pollution, conservation, and planning in the Potomac basin since 1941. The Potomac River Commission met recently with Congressional committees and it is expected that legislation for additional federal financial participation in the work of this joint federal-state agency will be forthcoming during the present session of Congress.

The Pennsylvania legislature has also recently ratified the Ohio River Valley Water Sanitation Compact. Indiana, Illinois, Kentucky, New York, Ohio, and West Virginia have previously ratified it and the Compact is expected to take effect when the Virginia legislature approves it.

Maryland Establishes Bureau of Medical Services

The 1945 General Assembly has amended the Health Provision of Article 45 of the *Annotated Code of Maryland* to provide for the establishment of a Bureau of Medical Services for indigent and medically indigent persons. The Bureau, under the direction of the Director of Health, is authorized to contract with physicians, dentists and hospitals for the treatment of eligible persons within the provisions of the budget and is authorized to provide, in appropriate circumstances, bedside nursing care. The new Bureau is to conduct and operate such hospitals as may be established by law for the care of persons suffering from chronic diseases. Upon the nomination of the Director of Health, the State Board of Health shall appoint a Chief of the Bureau of Medical Services and also such employees including nurses as may be necessary. All of these employees are to be appointed in accordance with provisions of the merit system. A Council of Medical Care will be established to advise in the formulation of policies for the administration of the medical care program. An appropriation of $200,000 for each of the next two fiscal years has been provided. This medical care program, recommended to the General Assembly by Governor Herbert R. O'Conor, was based upon a report of the Committee on Medical Care of the Maryland State Planning Commission.

WASHINGTON REPORT

Beginning with this issue STATE GOVERNMENT adds to its regular features a report prepared in the Washington Office of The Council of State Governments primarily concerning federal action of interest to the states. Significant interstate development will also be reported. Comments and suggestions by readers are invited.

Surplus Property*

THE SURPLUS PROPERTY BOARD is now carrying out provisions of the Surplus Property Act of 1944 which require that the states and their political subdivisions shall be given an opportunity to fulfill, in the public interest, their legitimate needs for federal surplus property. The SPB released in May its first regulation governing these preferences for the states and localities. SPB Regulation No. 2, effective May 25, provides as follows:

1. Each state and local government interested in buying surplus property must file their requests with the various federal disposal agencies on Form SPB-7.

2. Federal disposal agencies must inform the states and localities (which have filed Form SPB-7) of the items listed by them which are available for disposal.

3. After notification, there will be an 18 day period in which federal agencies will have the exclusive right to claim surplus property available for disposal. Then, for the next 12 days this exclusive right to purchase surplus will devolve upon the state and local governments, who will also have had a chance to place their orders during the 18 day federal agency period of priority.

4. Until the states can file Form SPB-7 (required by July 25) the Council of State Governments will assist in getting information to them on available surplus property.

SPB Regulation No. 4 has also been issued. It provides for the distribution of surplus aeronautical property to educational institutions for non-flight use at purely nominal prices to cover cost of handling. Educational and public health agencies will be given price preferences in the distribution of other surplus property suitable for their use, and the U. S. Public Health Service and U. S. Office of Education are now collecting information which will aid in establishing programs for the disposal of medical and educational property to eligible institutions.

Great Lakes Fisheries

A DRAFT of a proposed treaty for the international regulation of the Great Lakes fisheries was informally discussed recently at the State Department in Washington at a meeting of conservation officials of the Great Lakes states, staff members of the Council of State Governments, and federal officials. Preparation of the treaty grew out of the report and recommendations submitted to the State Department by the International Board of Inquiry for the Great Lakes Fisheries in 1942. The Board was established by the United States and Canada as a result of a series of meetings called by Commissions on Interstate Cooperation and the Council of State Governments.

*The Council of State Governments recently sent to the chief purchasing official of each state a manual entitled "How To Purchase Federal Surplus Property." This 20-page report contains detailed information on how to deal with the several federal disposal agencies. Additional copies are available at the Council's Washington office.

Aviation

HEARINGS WERE CONCLUDED June 1 on HR3170, the House version of the federal-aid airport bill, which would by-pass state governments by channeling the airport construction program directly to political subdivisions. During the hearings before the House Interstate Commerce Committee, members of the National Association of State Aviation officials appeared in opposition to the bill. Their testimony included a statement expressing the opposition of the Governors' Conference and the Council of State Governments to this type of legislation. Meanwhile S2, the Senate federal-aid airport bill continues on the Senate calendar. Action has been indefinitely postponed. State officials have consistently opposed this legislation in its present form (see May issue of STATE GOVERNMENT) because it fails to provide for exclusive state channeling of federal funds for airport construction. Both HR3170 and S2 would violate this long-standing principle of federal-state cooperation which has proven so effective in the case of highway, social security, and other grant-in-aid projects.

ODT

WITH ODT'S continued opposition to paying state taxes on motor truck lines which it has taken over and is now operating in 7 midwestern states, Congressional legislation, S992 and HR 3203, has been introduced to require ODT to pay such taxes. Within recent weeks state Attorneys General and staff members of the Council of State Governments have conferred with ODT officials and Congressmen in an effort to work out a solution to the legal and tax problems involved. ODT's refusal to pay taxes has caused the loss of considerable revenue by state governments. It has also resulted in much criticism of governmental regulatory policies both state and local because private truck lines have charged that the ODT-operated lines have an unfair competitive advantage, due to the fact that they have been able to get priorities for spare parts, tires, and are tax free. There is a possibility that this transportation and tax problem will be settled before Congressional hearings are held on the pending bills.

Postwar Public Works

THE FEDERAL WORKS AGENCY recently issued the regulation which will govern advances of funds to non-federal public agencies to assist in the preparation of plans for their postwar public works. Such advances had been authorized by the War Mobilization and Reconversion Act of 1944, and $17½ million was made available for this purpose in the Independent Offices Appropriation bill approved May 3. Complete information on the subject was forwarded to state planning officials by the Council of State Governments. FWA has also created a Public Works Construction Advisory Committee to assist General Fleming, FWA Administrator, in studying postwar public works problems.

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